

EXHIBIT 175

Vito, Robert

June 19, 2007

Philadelphia, PA

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

- - -

IN RE: PHARMACEUTICAL : MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION:
PRICE LITIGATION : 01-CV-12257-PBS
:
THIS DOCUMENT RELATES TO :
U.S. ex rel. Ven-A-Care of :
the Florida Keys, Inc. v. :
Abbott Laboratories, Inc. :
No. 06-CV-11337-PBS :
- - -

Videotaped deposition of ROBERT

VITO was taken, pursuant to notice, at MORGAN
LEWIS & BOCKIUS, LLP, 1701 Market Street,
Philadelphia, Pennsylvania, on Tuesday, June
19, 2007, beginning at 9:10 a.m., before M.
Kathleen Muino, Professional Shorthand
Reporter, Notary Public; Michael Hunterton,
Certified Legal Video Specialist, there being
present:

Henderson Legal Services
202-220-4158

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<p>1 You can answer.</p> <p>2 THE WITNESS: The difference between?</p> <p>3 BY MR. TORBORG:</p> <p>4 Q. Reasonable charge and reasonable cost.</p> <p>5 A. Well, one -- one is based on their 6 charge, information that they're submitting; the 7 other one is based on their cost.</p> <p>8 Q. And what is the cost; what does that 9 mean?</p> <p>10 MR. NEAL: Again, object to the form.</p> <p>11 You can answer.</p> <p>12 THE WITNESS: I -- I think it has 13 different meanings in -- in different contexts.</p> <p>14 BY MR. TORBORG:</p> <p>15 Q. And what is the charge, what does that 16 mean?</p> <p>17 MR. NEAL: The same objection.</p> <p>18 You can answer.</p> <p>19 THE WITNESS: I think it's like the 20 amount that a physician would submit for a service. 21 It doesn't necessarily have any relationship to the 22 amount that they get paid.</p>	<p>1 THE WITNESS: Originally, we were under 2 the impression that AWP stood for the average 3 wholesale prices; and then, through our work, we 4 were able to see that the AWP did not resemble the 5 prices that physicians and other providers were 6 able to purchase the drugs for.</p> <p>7 BY MR. TORBORG:</p> <p>8 Q. Let me ask my question again. When you 9 used the term "average wholesale price" or "AWP" in 10 your reports at OIG, did you mean it to refer to 11 prices published in Red Book or similar price 12 listings?</p> <p>13 MR. NEAL: Objection as to --</p> <p>14 MR. AZORSKY: Objection to form.</p> <p>15 MR. NEAL: I'll -- I'll join the 16 objection.</p> <p>17 You can answer.</p> <p>18 THE WITNESS: I -- I think that those 19 were the places where the AWP was housed, the Red 20 Book and the Blue Book. I believe the way the 21 regulation originally was stated, that they were 22 supposed to pay estimated acquisition cost.</p>
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<p>1 BY MR. TORBORG:</p> <p>2 Q. Later on in that last column, this 3 proposed regulations states: Also, we are 4 proposing that we will instruct all carriers to 5 base payment for drugs on 85 percent of a national 6 average wholesale price of the drug (as published 7 in the Red Book and similar price listings).</p> <p>8 During your approximately thirty years at the 9 OIG, have you understood that the term "average 10 wholesale price" referred to prices in the 11 compendia, such as Red Book?</p> <p>12 MR. NEAL: Object to the form.</p> <p>13 THE WITNESS: I -- I -- I believe that I 14 understood that AWP was reported in books like the 15 Red Book and the Blue Book.</p> <p>16 BY MR. TORBORG:</p> <p>17 Q. When you use the term "average wholesale 18 price" or "AWP" in your reports relating to 19 prescription drugs, did you mean it to refer to 20 prices that were published in Red Book and similar 21 price listings?</p> <p>22 MR. NEAL: Objection as to form.</p>	<p>1 BY MR. TORBORG:</p> <p>2 Q. I show you what's been marked as Exhibit 3 Abbott 038. What I've handed you as Exhibit Abbott 4 038, I believe, is a copy of a regulation. Section 5 405.517 is the one in particular I'm going to ask 6 you about. And the second page is something a 7 little bit different that I'll ask you about.</p> <p>8 You just made reference, Mr. Vito, to a 9 regulation referring to estimated acquisition cost, 10 correct?</p> <p>11 A. I believe, yes.</p> <p>12 Q. And if we go to the section 405.517, it 13 is titled, Payment for drugs that are not paid on a 14 cost or prospective payment basis. Do you see 15 that?</p> <p>16 A. Yes.</p> <p>17 Q. Is this the regulation to which you were 18 just referring?</p> <p>19 A. I'm not certain. I -- I -- I -- I -- I 20 have a -- I recollect that it was to be based on 21 the estimated acquisition cost.</p> <p>22 Q. Okay. If we go to Section B,</p>

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1 Methodology, it states: Payment for a drug 2 described in Paragraph A of this section is based 3 on the lower of the estimated acquisition cost or 4 the national average wholesale price of the drug. 5 Do you see that? 6 A. Yes. 7 Q. What is your understanding of the term 8 "national average wholesale price" of the drug as 9 used in this regulation? 10 MR. WINGET-HERNANDEZ: Objection; form. 11 MR. AZORSKY: Objection to form. 12 THE WITNESS: I -- I -- I -- I'm not sure 13 of the -- by the word "national" put in there, what 14 that means. 15 BY MR. TORBORG: 16 Q. What is your understanding of what the 17 term "average wholesale price" means in that 18 regulation? 19 MR. AZORSKY: Objection. 20 THE WITNESS: I -- I believe that the 21 average wholesale price, the way we envisioned, it 22 was the average of all the wholesale prices.	1 A. Yes. 2 Q. -- did you mean to refer to the prices 3 that were contained in the compendia? 4 MR. NEAL: Objection as to form. 5 MR. AZORSKY: Objection to form. 6 THE WITNESS: They were where we obtained 7 the -- they were where the prices -- that is what 8 CMS used to set the prices. 9 BY MR. TORBORG: 10 Q. Can you answer my question? 11 MR. AZORSKY: Objection to form. 12 MR. NEAL: Objection. The question's 13 argumentative. 14 MR. TORBORG: I'll ask it again. 15 BY MR. TORBORG: 16 Q. When you, Mr. Vito, used the term 17 "average wholesale price" in your work at OIG and 18 in your reports, did you mean to refer to prices 19 published in the compendia? 20 MR. AZORSKY: Objection to form. 21 MR. WINGET-HERNANDEZ: Objection. 22 MR. NEAL: The same objection.
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1 BY MR. TORBORG: 2 Q. Is it your testimony here today that 3 when you used the term "average wholesale price" or 4 "AWP" in your work at OIG, that you did not mean to 5 refer -- 6 A. No. 7 Q. -- to prices -- 8 A. No, no. No, I -- 9 Q. -- in the compendia? 10 A. No, I don't think that's -- 11 MR. NEAL: Objection to the form. 12 You can answer. 13 THE WITNESS: I -- I believe what I was 14 saying is, is that we -- we -- we got the 15 information on what was setting the prices, which 16 was apparently the AWP from the Blue Book and the 17 Red Book. 18 BY MR. TORBORG: 19 Q. When you used the term "average 20 wholesale price" -- 21 A. Yes. 22 Q. -- in your reports -- reports at OIG --	1 MS. CONNOLLY: Asked and answered. 2 THE WITNESS: That is where the AWP -- 3 that is where you obtained the average wholesale 4 pricing information, from the Blue Book and the Red 5 Book and Medispan. 6 BY MR. TORBORG: 7 Q. When you used the -- when you use the 8 term "AWP," are you thinking that's what's in Red 9 Book or the price -- other price listings? 10 MR. AZORSKY: Objection to form. 11 MR. NEAL: Object to the form. 12 THE WITNESS: We -- we -- we, again, 13 compared the prices that Medicare set, and they set 14 it based on, I believe, in -- in the Medicare 15 program, either AWP or a percentage off of AWP. 16 BY MR. TORBORG: 17 Q. I'm going to hand you what we've marked 18 previously as Exhibit Abbott 049. 19 A. Uh-huh. 20 Q. Mr. Vito, Exhibit Abbott 049 is an OIG 21 report entitled, Excessive Medicare Payment -- 22 Medicare Payments for Prescription Drugs, dated

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<p style="text-align: right;">Page 142</p> <p>1 December 1997. The second page indicates it was 2 prepared under your direction. Is that right? 3 A. That is correct. 4 Q. Do you recall this report? 5 A. Yes, I do. 6 Q. If you go to the section under 7 Background, see the third paragraph, starting with, 8 on January 1; do you see that? 9 A. Yep. 10 Q. On January 1, 1998, Medicare Part B will 11 begin -- begin to reimburse covered drugs at 95 12 percent of the average wholesale price. Currently, 13 Medicare couriers may -- Medicare carriers may 14 determine the amounts that Medicare will pay for 15 these drugs based on either the lower of the 16 estimated acquisition cost or the national average 17 wholesale price. 18 A. Uh-huh. 19 Q. The EAC is determined based on surveys 20 of the actual invoice prices paid for the drug. 21 The AWP is reported in the Red Book and other 22 pricing publications and databases used by the</p>	<p style="text-align: right;">Page 144</p> <p>1 calculated it, they told us they used the AWP and 2 then if there was a percentage off, then they did 3 that. They told us they took a percentage off of 4 that. 5 BY MR. TORBORG: 6 Q. When you used the term "average 7 wholesale price," did you equate it to the prices 8 that were in Red Book and other price listings? 9 MR. AZORSKY: Objection to the form. 10 MR. NEAL: Join the objection. 11 THE WITNESS: I believe it was listed in 12 the Red Book and the Blue Book, yes. 13 BY MR. TORBORG: 14 Q. Did you equate it; yes -- 15 MR. AZORSKY: Objection -- 16 BY MR. TORBORG: 17 Q. -- or no? 18 MR. AZORSKY: -- to form. Objection to -- 19 THE WITNESS: I -- I -- I -- 20 BY MR. TORBORG: 21 Q. It's a yes or no question. 22 MR. AZORSKY: How many times you going to</p>
<p style="text-align: right;">Page 143</p> <p>1 pharmaceutical industry. Historically, it has been 2 the AWP that carriers have used to develop Medicare 3 reimbursement for prescriptions drugs. 4 Did I read that correctly? 5 A. Yes. 6 Q. And is that consistent with what your 7 understanding of what the term "AWP" meant in the 8 regulations prior -- that were in effect prior to 9 1998? 10 MR. NEAL: Objection as to form. 11 You can answer. 12 THE WITNESS: We -- we understood that 13 the AWP was the information that Medicare used to 14 set the prices and it did come out of the Red Book 15 and the Blue Book. 16 BY MR. TORBORG: 17 Q. Did you equate the term "AWP" with the 18 prices that were in Red Book and other price 19 listings? 20 MR. AZORSKY: Objection to form. 21 MR. NEAL: Join the objection. 22 THE WITNESS: When we asked CMS how they</p>	<p style="text-align: right;">Page 145</p> <p>1 ask him? 2 MR. TORBORG: Until -- until I get an 3 answer. 4 MR. AZORSKY: You 5 (unintelligible) -- 6 MR. TORBORG: Until I get an answer. 7 MR. AZORSKY: -- answered ten times. 8 MR. NEAL: You're -- you're -- you're 9 dissatisfied with -- 10 MR. TORBORG: You can object. 11 MR. NEAL: You're dissatisfied with the 12 answer, but you've gotten an answer. 13 MR. TORBORG: Well, I haven't gotten -- 14 MR. NEAL: And the question's -- 15 MR. TORBORG: -- an answer. 16 MR. NEAL: -- been asked and answered a 17 number of times now. You can ask it again. 18 BY MR. TORBORG: 19 Q. It's a yes or no question, Mr. Vito. 20 When you used the term "average wholesale price" in 21 your work at OIG, did you equate it with the prices 22 that were published in Red Book and other price</p>